

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	]	Examiner: Manuel A. Mendez
Douglas E. Ott, et al.	]	
	]	Group Art Unit: 3763
Serial No.: 09/314,052	]	
Filing Date: May 18, 1999	]	Attorney Docket No. 1-15372
	]	
Title: METHOD AND APPARATUS	]	Confirmation No. 4618
FOR CONDITIONING GAS	]	
FOR MEDICAL PROCEDURES	]	

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MAIL STOP AMENDMENT  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

AMENDMENT

WITH

SECOND AMENDED SUGGESTION FOR INTERFERENCE WITH PATENT NO. 6,976,489

PURSUANT TO 37 C.F.R. §41.202

Honorable Sir:

Applicants, in response to the Official Action of November 19, 2008, which held the reply filed on August 12, 2008 **to be non-compliant since the added/deleted language is not marked properly**, hereby re-present the "Amendment With Amended Suggestion for Interference with Patent No.6,976,489 Pursuant to 37 C.F.R. §41.202" as a second amended suggestion with the claims properly marked.

Applicants, in response to the Office actions of November 19, 2008 and August 24, 2007, and the Examiner's request made during the telephone interview of July 15, 2008, respectfully submit this Second Amended Request for Interference with Patent

Pursuant to 37 C.F.R. §41.202 and in furtherance of Applicants' Amendment filed February 9, 2005 copying claims from, and requesting an interference with, U.S. Patent Application No. 09/896,821 (now U.S. Patent No. 6,976,489, hereinafter collectively, the "'489 Patent"). Claims 83, 84, and 87 of the present application were copied from the '489 Patent.

Claim 86 was substantially copied from the '489 Patent. In response to the amendment dated August 12, 2008, and the Examiner Interview of July 15, 2008, all claims of the instant application were allowed, including Claims 83, 84, 86 and 87. Accordingly, Applicants respectfully request that the Examiner declare an Interference between the present Application and the '489 Patent in view of the following comments.

#### Clarification of the status of Claim 87

In the Official Action of August 24, 2007, and during a telephone interview on October 17, 2007, the Examiner in charge of the present application, Mr. Manuel Mendez, requested clarification of the status of claim 87. The Examiner has pointed out that in the amendment of February 9, 2005, claims 82-87 were disclosed. However, in later amendments dated October 26, 2005 and May 17, 2006, only claims 82-86 were discussed as pending, and there is no record of claim 87 being cancelled. For these reasons clarification was requested.

The undersigned Attorney of Record has now reviewed the file and has determined that claims 82-87 were present in the amendment dated February 9, 2005. Indeed, this is the very amendment in which they were first introduced.

In response to the amendment, Examiner Mendez, who was newly assigned to the case because of the departure of Examiner Michael Thompson, issued a Notice of Non-Compliant Amendment and requested clarification as to how the new claims could overcome the references cited.

In response to the Notice of Non-Compliant Amendment, Applicants filed the amendment dated October 25, 2006. In that amendment, the undersigned Attorney of Record inadvertently failed to include claim 87. Applicants' Attorney apologizes for any inconvenience this has caused the Examiner.

In response, the Examiner issued a restriction requirement between the species of Fig.1 (gas apparatus with no temperature sensor) and Figs. 4 & 5 (gas apparatus with temperature sensor). In the amendment dated February 16, 2006, even though Applicants traversed the restriction requirement, Applicants elected to prosecute the species of Fig. 4 & 5, and listed claims 83-86 as reading thereon. Had Applicants Attorney noticed the omission of claim 87 at the time, it would have also been listed with claims 83-86, as it has a temperature sensor.

Applicants believe that claim 87 is allowable, and should be in the interference proceedings, as Claim 87 was copied from Claim 30 of the U.S. Patent No. 6,976,489. Claim 87 deals with the same subject matter as claims 83-86. Since claims 83-86 were allowable over U.S. Patent No. 6,976,489, Applicants suggest that claim 87 is also allowable.